IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 613 OF 2005

Ramchandra Babaso Nimbalkar
(since deceased, through his
legal heirs). ... Appellants

V/s

Patu @ Appaso Chimasaheb Nimbalkar
(since deceased, through his
legal heirs) and ors. ... Respondents

Mr. A.B. Borkar for the appellants.

Mr. M.L. Patil for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 11TH JULY, 2005

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 16.9.2003 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Kagal dated 18.11.1998.

2. The suit was filed for partition and possession amongst the parties in respect of the suit properties and consequential reliefs.

3. I have heard the learned counsel for both parties. Perused the record.

4. The plaintiffs filed the suit for partition and possession under the provisions of Hindu Law. The plaintiffs came with the case that the suit properties were joint family properties and plaintiffs had 1/6 share in the suit property and for separate possession.

The defendants challenged the suit on various grounds inter-alia submitting that, by virtue of certificate under Sec. 24 of the provisions of Bombay Prevention of Fragmentation and Consolidation Holdings Act, 1947. The suit properties were finally mutated in the name of defendants by virtue of the said certificate and, as such, the plaintiffs had no right, title and interest in the suit properties. It was further contended that deceased Chimasaheb had sold his share in part of the land in favour of Shivram Patil and Tukaram Patalu Patil and, therefore, the plaintiffs were not entitled to share in the suit property.

The learned Trial Judge, on the basis of available evidence and after hearing both parties, came to the

conclusion that the plaintiffs had proved that the suit properties were joint un-divided family properties of the parties and plaintiffs had 7/48 share in the suit property. It was further held that the defendants had failed to prove either the fact that Chimasaheb had sold his share in the suit properties and it was sold for consideration and orally allotted part of the land through his property to defendant No.1 for partition and, as such, the suit came to be decreed.

The appeal was carried to the District Court. The learned Addl. District Judge, Kolhapur, after hearing both parties, came to the conclusion that the reasonings adopted and findings recorded by the learned lower lower Court Judge were legal and proper and, therefore, appeal came to be dismissed. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. Both the Courts below have seen to have appreciated the factual aspects of the evidence on the basis of available record and have come to the conclusion that the plaintiffs have proved characteristic of the suit property that was of joint Hindu family property and, therefore, they were held

entitled for consequential relief of partition and accordingly the plaintiffs' share was also adjudicated with direction that he was entitled to get physical possession thereof.

6. The learned counsel for the appellants submitted that, once the certificate under Sec. 24 of the Bombay Prevention of Fragmentation and Consolidation Act was issued in favour of the defendant No.1, the Civil Court had no jurisdiction to enter into the controvery in order to determine the title as the title was finally determined by virtue of the said certificate contemplated under Sec. 24 of the said Act. However, I prefer to disagree with this proposition. The certificate contemplated under Sec. 24 of the said Act is the transfer certificate issued consequent upon the consolidation proceeding held with regard to the concerned properties, however, that would not preclude the Civil Court from dealing with any question of title in respect of immovable property which was subjected to consolidation proceeding especially when the question involved was not in respect of the question which was to be settled, decided or dealt with as the State Government or other authority under the said Act. Under the circumstances, there is absolutely no merit in the

second appeal. Moreover, there is no reason to disturb the concurrent findings recorded by both the Courts below which are just, legal and proper based on the available evidence on record.

7. In the result, the appeal has no merit and, therefore, deserves to be dismissed. Hence, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 301 of 2004 also stands dismissed with no order as to costs.

8. At this stage, the learned counsel for the appellants seeks stay of this order. In view of the facts and circumstances, the order stands stayed for a period of six weeks.

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